

ASSEMBLY BILL

No. 2139

Introduced by Assembly Member Chesbro

February 18, 2010

An act to add Chapter 5 (commencing with Section 48800) to Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2139, as introduced, Chesbro. Solid waste: product stewardship.

The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, requires a pharmaceutical manufacturer that sells or distributes medication that is self-injected at home through the use of hypodermic needles and other similar devices to submit a plan to the department that describes how the manufacturer supports the safe collection and proper disposal of the waste devices.

This bill would create the California Product Stewardship Act and would define the term “covered product” as including medical sharps, containers used to contain pesticides intended for residential use, small personal use propane tanks, personal butane lighters, and single-use food packaging that the department determines is a significant source of ocean and beach contamination. The bill would require the department by July 1, 2011, to establish a baseline collection rate for the amount of those products that is discarded and subsequently collected. The bill would provide a procedure for determining the collection rate applicable commencing January 1, 2014.

The bill would require, by September 30, 2011, a producer or the product stewardship organization created by one or more producers of a covered product to submit a product stewardship plan to the

department, which would be required to include specified elements, including performance goals and product goals. On or before January 1, 2012, the department would be required to review and either approve or disapprove the product stewardship plan submitted to the department.

The bill would prohibit the producer of a covered product, on and after July 1, 2012, from selling a covered product unless the producer or product stewardship organization of the covered product has submitted a plan to the department that is approved by the department. The act would require a producer of a covered product to collect the covered product pursuant to the product stewardship plan and to meet the performance goals included in the product stewardship plan.

Each producer or product stewardship organization implementing a product stewardship plan would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the product stewardship plan.

A producer or product stewardship organization submitting a product stewardship plan would be required to pay the department a fee of \$10,000 when submitting the plan for review and approval and to pay an annual administrative fee of \$1,000. The bill would provide for the imposition of administrative civil penalties upon a producer who does not comply with the act's requirements. The bill would create in the existing Integrated Waste Management Fund the Product Stewardship Account and would require that the administrative fees be deposited into that account and that the penalties be deposited into the Product Stewardship Penalty Subaccount that the bill would create in that account. The bill would authorize the fees and penalties to be expended, upon appropriation by the Legislature, to cover the board's program implementation costs and as incentives to enhance recyclability and redesign efforts and to reduce environmental and safety impacts of covered products.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 5 (commencing with Section 48800) is
- 2 added to Part 7 of Division 30 of the Public Resources Code, to
- 3 read:

1 CHAPTER 5. CALIFORNIA PRODUCT STEWARDSHIP PROGRAM

2
3 Article 1. Findings and Declarations
4

5 48800. The Legislature finds and declares all of the following:

6 (a) This chapter requires the Department of Resources Recycling
7 and Recovery to develop, implement, and administer the Product
8 Stewardship Program.

9 (b) Product stewardship is a mechanism to place responsibility
10 for end-of-life management issues for products on those involved
11 in the product chain in an equitable manner.

12 (c) The program established by this chapter will test the efficacy
13 of a consistent framework approach for managing products that
14 have significant end-of-life waste management impacts as well as
15 impacts on the environment and public health. This framework
16 approach provides a consistent process that includes goals and
17 oversight so that a level playing field exists among all producers,
18 while maintaining flexibility for specific products and for producers
19 to design their product stewardship programs.

20 (d) End-of-life management of solid waste has historically been
21 the responsibility of state and local governments with the primary
22 physical management and financial burden placed on local
23 government and ratepayers, who have no ability to influence the
24 design of the products or packaging to reduce waste management
25 costs.

26 (e) Prior to this program, the state addressed products with
27 end-of-life management issues through a patchwork of product
28 and material specific programs.

29 (f) Implementing product stewardship programs that are funded
30 and managed by the producers of products with significant
31 end-of-life impacts reduces the role of, and cost to, state and local
32 government and ratepayers.

33 (g) The Product Stewardship Program established by this chapter
34 will explore the feasibility and potential environmental, economic,
35 and social benefits of instituting a permanent product stewardship
36 program for an extended number of products while still providing
37 producers with the flexibility to customize individual product
38 stewardship plans toward the most effective and efficient approach
39 for a particular product or product category.

1 (h) The Product Stewardship Program established by this chapter
2 will test the applicability of extended producer responsibility and
3 may be used as a template for including additional products in
4 these programs.

5
6 Article 2. General Provisions
7

8 48800.1. This chapter shall be known and may be cited as the
9 California Product Stewardship Act.

10
11 Article 3. Definitions
12

13 48800.2. For purposes of this chapter, and unless the context
14 otherwise requires, the definitions in this article govern the
15 construction of this chapter.

16 48800.3. “Brand” means a name, symbol, word, or mark that
17 identifies a product, rather than its components, and attributes the
18 product to the owner or licensee of the brand as the producer.

19 48800.4. “Collection rate” means a quantitative measure
20 established by the department pursuant to Section 48811 or
21 determined pursuant to Section 48812, as applicable, that
22 establishes the amount of a covered product required to be collected
23 pursuant to a product stewardship plan.

24 48800.5. “Consumer product” means a product that is sold in
25 this state in a transaction that is a retail sale or in a transaction to
26 which a use tax applies pursuant to Part 1 (commencing with
27 Section 6001) of Division 2 of the Revenue and Taxation Code.

28 48800.6. “Covered product” means all of the following
29 consumer products that are used or discarded in this state, as
30 defined by the department:

31 (a) “Covered product 1” means medical sharps, including
32 hypodermic needles, hypodermic needles with syringes, blades,
33 and needles, that are not subject to Article 3.3 (commencing with
34 Section 47115) or Chapter 1 of Part 7.

35 (b) “Covered product 2” means containers used to contain
36 pesticides intended for residential use.

37 (c) “Covered product 3” means small personal use propane
38 tanks.

39 (d) “Covered product 4” means personal butane lighters.

1 (e) “Covered product 5” means single-use food packaging that
2 the department determines is a significant source of ocean and
3 beach contamination.

4 48800.7. “Department” means the Department of Resources
5 Recycling and Recovery.

6 48800.8. “Performance goal” means the collection rate of a
7 covered product, and may include, but is not limited to, the reuse
8 and recycling rate established by the product stewardship plan for
9 that covered product.

10 48800.9. “Producer” shall be determined, with regard to a
11 covered product that is sold, offered for sale, or distributed in the
12 state, as meaning one of the following:

13 (a) A person who manufactures the covered product and who
14 sells, offers for sale, or distributes that covered product in the state
15 under that person’s own name or brand.

16 (b) If there is no person who sells, offers for sale, or distributes
17 the covered product in the state under the person’s own name or
18 brand, the producer of the covered product is the owner or licensee
19 of a trademark or brand under which the covered product is sold
20 or distributed in the state, whether or not the trademark is
21 registered.

22 (c) If there is no person who is a producer of the covered product
23 for purposes of subdivisions (a) and (b), the producer of that
24 covered product is the person who imports the product into the
25 state for sale or distribution.

26 48800.10. “Product goal” means those qualitative or
27 quantitative goals determined by the producer to measure
28 improvements that reduce the life cycle impacts of a covered
29 product.

30 48800.11. “Product stewardship” means requiring the producer
31 of a covered product, and all other entities involved in the product
32 chain, to share in the responsibility of reducing the life cycle impact
33 of the covered product and its packaging, including requiring the
34 producer who makes design and marketing decisions for the
35 covered product to bear the primary responsibility for this
36 reduction.

37 48800.12. “Product stewardship organization” means an
38 organization appointed by one or more producers to act as an agent
39 on behalf of the producer to design, submit, and administer a
40 product stewardship plan pursuant to this chapter.

1 48800.13. "Product stewardship plan" or "plan" means a plan
2 written by an individual producer or a product stewardship
3 organization, on behalf of one or more producers, that includes all
4 of the information required by Section 48813.

5 48800.14. "Recycling rate" means a quantitative measure that
6 establishes the amount of a collected covered product that is
7 recycled as compared to the total amount of the covered product
8 that is collected, including the amount of the covered product that
9 is discarded for reuse, energy recovery, or safe disposal.

10 48800.15. "Reporting period" means the period commencing
11 January 1 and ending on December 31 of the same calendar year.

12 48800.16. "Reuse rate" means a quantitative measure that
13 establishes the amount of a collected covered product that is reused
14 as compared to the total amount of the covered product that is
15 collected, including the amount of the covered product that is
16 discarded by recycling, energy recovery, or safe disposal.

17 48800.17. "Sell" or "sales" means any transfer of title of a
18 covered product for consideration, including a remote sale
19 conducted through a sale outlet, catalog, or Internet Web site or
20 similar electronic means, but does not include a lease.

21 22 Article 4. Product Stewardship Program 23

24 48810. This chapter does not limit, supersede, duplicate, or
25 otherwise conflict with the authority of the Department of Toxic
26 Substances Control under Section 25257.1 of the Health and Safety
27 Code to fully implement Article 14 (commencing with Section
28 25251) of Chapter 6.5 of Division 20 of the Health and Safety
29 Code, including the authority of the Department of Toxic
30 Substances Control to include products in its product registry.

31 48811. (a) On or before July 1, 2011, the department shall
32 establish a baseline collection rate for the amount of each covered
33 product that is discarded and subsequently collected, based on
34 existing collection data.

35 (b) On and after July 1, 2011, and for the calendar years
36 commencing January 1, 2012, and January 1, 2013, the collection
37 rate shall be the collection rate established pursuant to this section.

38 48812. (a) On and after January 1, 2014, the collection rate
39 for a covered product shall be determined in the following manner:

1 (1) For the calendar year commencing January 1, 2014, the
2 collection rate shall be 5 percent more than the baseline collection
3 rate determined pursuant to Section 48811.

4 (2) On and after January 1, 2015, the collection rate for each
5 covered product shall increase by no less than 5 percent annually
6 until a 95 percent collection rate is reached.

7 (b) A producer may petition the department for an adjustment
8 to the collection rate. The department may grant an adjustment to
9 the collection rate only if the department determines there are
10 documented exigent circumstances that are beyond the control of
11 the producer or product stewardship organization.

12 48813. (a) On or before September 30, 2011, a producer or a
13 product stewardship organization that is created by one or more
14 producers of a covered product shall submit a product stewardship
15 plan to the department. A product stewardship organization created
16 pursuant to this section shall be open for participation by all
17 producers of a covered product.

18 (b) A producer, group of producers, or product stewardship
19 organization shall consult with stakeholders during the
20 development of the product stewardship plan, including soliciting
21 stakeholder comments and responding to stakeholder comments
22 prior to submitting the product stewardship plan.

23 (c) Each product stewardship plan for a covered product shall
24 address the environmental impacts of the covered product over
25 the entire life cycle of that product, including the product design,
26 manufacture, and distribution of the covered product, and the
27 collection, transportation, reuse, recycling, and final disposition
28 of the discarded covered product, in accordance with this chapter.
29 The plan shall include, at a minimum, all of the following elements:

30 (1) Contact information for all participating producers.

31 (2) A description of the covered product and associated brands
32 covered by the plan.

33 (3) Performance goals, including a detailed description of how
34 the performance goals will be achieved and how results will be
35 measured, and including both of the following:

36 (A) The collection rate shall be included as a performance goal
37 for the covered product.

38 (B) A reuse rate and a recycling rate for the covered product
39 shall be included in the performance goals.

1 (4) An overview of the roles and responsibilities of key players
2 along the product chain.

3 (5) Financing methods for the product stewardship plan.

4 (6) Strategies for managing and reducing the life cycle impacts
5 of the covered product, steps that will be taken to ensure
6 environmentally sound management, and how impacts will be
7 tracked over time to show continual improvement.

8 (7) Education and outreach activities.

9 (8) A description of the consultation process used to consult
10 with affected stakeholders regarding the product stewardship plan.

11 (9) Product goals, including, but not limited to, product
12 designing and materials content, manufacturing, packaging,
13 distribution, and end-of-life management goals. The product goals
14 shall address the use of virgin material in the manufacture of the
15 covered product, the impact upon, or use of, water or energy by
16 the covered product, the use of, or generation of hazardous
17 substances by, the covered product, the carbon footprint of the
18 covered product, the covered product's longevity, the recycled
19 content of the covered product, and the covered product's
20 recyclability, where applicable.

21 48814. (a) On or before January 1, 2012, the department shall
22 review the product stewardship plan submitted to the department
23 and either approve or disapprove the plan. If the department does
24 not approve the plan, the department shall notify the producer or
25 organization that submitted the plan and the producer or
26 organization shall revise and resubmit the disapproved product
27 stewardship plan within 30 days after receiving the notification.

28 (b) All product stewardship plans submitted to the department
29 shall be available to the public on the department's Internet Web
30 site.

31 (c) A producer shall notify the department 30 days before
32 instituting a significant or material change to a product stewardship
33 plan.

34 48815. On and after July 1, 2012, a producer shall not offer a
35 covered product for sale in this state or offer a covered product
36 for promotional purposes in this state unless the producer or a
37 product stewardship organization consisting of producers of the
38 covered product has submitted a product stewardship plan to the
39 department pursuant to Section 48816 and the product stewardship
40 plan is approved by the department pursuant to Section 48817.

1 48816. A producer of a covered product shall do all of the
2 following when implementing this chapter, including an approved
3 product stewardship plan:

4 (a) Collect the individual covered product to be reused or
5 recycled pursuant to the product stewardship plan for the covered
6 product submitted by the producer or product stewardship
7 organization pursuant to Section 48813 and approved by the
8 department pursuant to Section 48814.

9 (b) Meet the performance goals included in the product
10 stewardship plan, including achieving the collection rate established
11 pursuant to Section 48812.

12 (c) Provide collection services, in accordance with Section
13 48817, for the covered product, that do not charge a fee at the time
14 when the covered product is collected for either recycling or
15 disposal.

16 (d) Pay all administrative and operational costs associated with
17 the product stewardship plan, including the costs of collection,
18 transportation, and recycling or disposal, or both, of the covered
19 product.

20 (e) Submit the annual report required by Section 48818.

21 48817. A covered product shall be handled and recycled, or if
22 not feasible to be recycled, disposed of, in accordance with all
23 state and federal laws and regulations and local ordinances and
24 regulations, including, but not limited to, any law, regulation, or
25 ordinance that regulates hazardous waste.

26
27 Article 5. Reporting
28

29 48818. (a) Beginning one year after a product stewardship
30 plan is approved or no later than January 1, 2013, whichever date
31 is earlier, and every subsequent year thereafter, each producer or
32 stewardship organization implementing a product stewardship plan
33 shall prepare and submit to the department an annual report
34 describing the activities carried out pursuant to the product
35 stewardship plan during the previous reporting period, including,
36 but not limited to, all of the following:

37 (1) Whether the producer or product stewardship organization,
38 in implementing the plan, attained the performance goals for the
39 covered product, and if the performance goals were not met, what

1 actions the producer or product stewardship organization will take
2 during the next reporting period to attain those performance goals.

3 (2) Whether the producer or product stewardship organization,
4 in implementing the plan, attained the product goals for the covered
5 product, and if the product goals were not met, what actions the
6 producer or stewardship organization will take during the next
7 reporting period to achieve those product goals.

8 (b) The department shall review a report submitted pursuant to
9 this section and shall approve the report if the department
10 determines the report contains the information required by this
11 section.

12 (c) The department shall make all reports submitted to the
13 department pursuant to this section available to the public on the
14 department's Internet Web site.

15 Article 6. Financial Provisions

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18 48819. (a) The producer or product stewardship organization
19 submitting a product stewardship plan shall pay the department
20 an administrative fee in the amount of ten thousand dollars
21 (\$10,000) when the plan is submitted for review and approval and
22 thereafter pay an annual administrative fee of one thousand dollars
23 (\$1,000).

24 (b) The total amount of annual fees collected pursuant to this
25 section shall not exceed the amount necessary to recover costs
26 incurred by the department in connection with the administration
27 and enforcement of the requirements of this chapter.

28 48820. (a) The Product Stewardship Account and the Product
29 Stewardship Penalty Subaccount are hereby established in the
30 Integrated Waste Management Fund.

31 (b) All fees collected pursuant to this chapter shall be deposited
32 in the Product Stewardship Account and may be expended by the
33 department, upon appropriation by the Legislature, to cover the
34 department's costs to implement this chapter.

35 (c) All penalties collected pursuant to this chapter shall be
36 deposited in the Product Stewardship Penalty Subaccount and may
37 be expended by the department, upon appropriation by the
38 Legislature, to cover the department's costs to implement this
39 chapter.

1 (d) All funds collected may be expended as incentives to
2 enhance reuse, recyclability, and redesign efforts and to reduce
3 environmental and safety impacts of covered products.

4
5 Article 7. Enforcement
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7 48821. (a) If, after holding a public hearing, the department
8 finds that a producer has failed to make a good faith effort to
9 comply with this chapter, the department shall issue a compliance
10 order with a schedule for achieving compliance.

11 (b) If, after issuing an order and schedule for compliance
12 pursuant to subdivision (a), the department finds that the producer
13 has failed to make a good faith effort to comply with this chapter,
14 the department may impose an administrative civil penalty of ten
15 thousand dollars (\$10,000) per day until the producer achieves
16 compliance.

17 (c) For purposes of this section, “good faith effort” means all
18 reasonable and feasible efforts by a producer towards implementing
19 the requirements of this chapter, including, but not limited to,
20 meeting the performance goals specified in the plan.

21 48822. (a) The department, or its designee, may inspect, audit,
22 or require and review third-party audits of producers, product
23 stewardship organizations, and service providers, including
24 collectors and recyclers, that are utilized to fulfill the requirements
25 of a product stewardship plan.

26 (b) For purposes of this section, a “service provider” means any
27 person who is authorized to perform an action to implement the
28 product stewardship plan with regard to the collection, recycling,
29 reuse, or disposal of a covered product, but does not include the
30 consumer of the covered product.